

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 00-6273-CR-HUCK

FILED - 3 PM 4:17

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

ARIEL HERNANDEZ, et al.,

*Defendant,*

**DEFENDANT'S MOTION FOR DISCOVERY AND SUPPRESSION**  
**OF CO-CONSPIRATOR'S STATEMENTS**  
**and INCORPORATED MEMORANDUM OF LAW**

THE DEFENDANT, **ARIEL HERNANDEZ**, by and through the undersigned counsel, respectfully moves this Honorable Court for entry of an Order for discovery and suppression of co-conspirator statements, and in support thereof would state

1. The indictment alleges that the Defendant committed the following conspiracies:

- |           |   |
|-----------|---|
| Count 1:  | RICO Conspiracy - 18 USC 1962(d)  |
| Count 17: | Conspiracy to Commit Murder in Aid of Racketeering<br>(18 USC 1959(a)(5)) |

2. The Defendant requests the Court to order the attorney for the Government to provide the Defendant with copies of all reports, summaries memoranda of interviews, and statements of all persons who could be considered to be co-conspirators of the defendant, indicted and unindicted, which statements could be offered into evidence pursuant to Rule 801 (d)(2)(E), F.R. Evid. The statements of co-conspirators are discoverable under Rule 16, F.R.Cr.P., since they would be admissible against Defendant as if they were his own words if a conspiracy in fact existed. United States v. Thevis, 84 F.R.D. 47 (N.D. Ga.) (Aff'd 665 F.2d 616 (5th Cir. 1980).

3. Defendant would then move for the suppression of all such statements which are not proven to have been made by a co-conspirator, in the course of the conspiracy, and in furtherance of the conspiracy. Defendant submits that the determination of this Motion requires as preliminary pre-trial showing by the Government by substantial independent evidence that a conspiracy in fact existed,



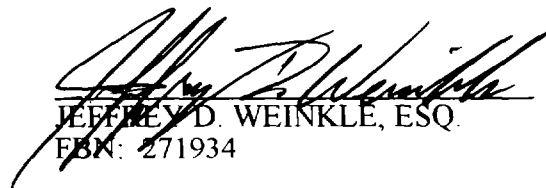
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that the Defendant and the declarant were members of the conspiracy, and that said statements were made in the course of and in furtherance of the conspiracy. Rule 104, F.R.Evid.; United States v. James, 590 F.2d 575 (5th Cir. 1979) (en banc); United States v. Bolla, 685 f.2D 929 (5TH CIR. 1982). The determination of the predicate facts for the admissibility of such statements must be made before such statements come into evidence. Since a preliminary determination can be made outside the presence and hearing of the jury in, for example, a pre-trial hearing. United States v. James, supra.

The undersigned has attempted to contact AUSA Jeffrey Sloman and AUSA Larry Levicchio regarding the Government's position with regard to this Motion, however, neither was available for comment.

WHEREFORE, predicated upon the foregoing, the Defendant respectfully moves this Honorable Court to enter its Order directing the disclosure of all such co-conspirators statements and Defendant further prays for a preliminary hearing to establish the admissibility thereof.

Respectfully submitted,

  
JEFFREY D. WEINKLE, ESQ.  
EBN: 271934

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/delivered this

2nd day of March, 2001 to: United States Attorney's Office, AUSA LARRY

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